

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of Protest for Redetermination of, )  
 [REDACTED] Petitioner. ) DOCKET NO. 18133  
 )  
 ) DECISION  
 )  
 )

On April 22, 2004, the Contract Desk Section of the Sales Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional use tax and interest in the total amount of \$4,534 for the period of January 1, 2002 through December 31, 2003. The taxpayer timely protested and requested a redetermination on June 23, 2004. The taxpayer requested an informal conference, which was held on September 14, 2004. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

The taxpayer is a contractor specializing in the installation of playground equipment for public schools and municipalities. All of the jobs in question were for public school districts. The taxpayer stated that the school districts purchase the playground equipment and specify the exact place where each piece of equipment is to be installed. The taxpayer is only responsible for installation of the equipment according to the instructions of the school districts.

Idaho Code § 63-3621 imposes a use tax on the storage use or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax imposed by Idaho Code § 63-3619. Every state that imposes a sales tax has a provision for a use tax. The use tax rate is the same as the sales tax. The use tax is imposed on purchases of goods that are not taxed by the seller.

Idaho Code § 63-3615 defines the term “use” as:

**63-3615. STORAGE -- USE.** -- (a) The term "storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(b) *The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section 63-3622D, Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business.*

(c) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state. (Emphasis added.)

Idaho Code § 63-3609 defines contractors improving real property as the consumers of the materials they install:

**63-3609. RETAIL SALE -- SALE AT RETAIL.** -- The terms "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

The Contract Desk in this case imposed tax on the taxpayer's use of playground equipment installed as fixtures to realty.

The taxpayer presented a very technical argument relying on two federal cases, *United States v. Boyd*, 378 U.S. 39, 84 S.Ct. 1518, (1964) and *United States v. New Mexico*, 455 U.S. 720, 102 S.Ct. 1373, (1984). Both cases involved contractors working for the federal government. In both cases the court held that the states were not preempted from imposing sales and use tax on contractors working for agencies of the government of the United States.

The taxpayer contends that the court allowed the imposition of the tax because the contractors in both cases had control of the purchasing process. Since the taxpayer did not have control of the purchasing process for the items in question, he reasons that the State of Idaho has no authority to impose tax on him. The problem with this reasoning is that the two cases cited dealt with the supremacy clause of the United States Constitution and whether the states had the power to impose tax on federal government contractors. Since the taxpayer did not work for any federal agencies during the audit period, the cases are inapplicable.

It is true that school districts are not required to pay sales or use tax pursuant to Idaho Code § 63-3622O. That statute is very clear on the status of contractors working for exempt organizations. The statute states, in relevant part:

**63-3622O. EXEMPT PRIVATE AND PUBLIC ORGANIZATIONS** -- (1) There are exempted from the taxes imposed by this chapter:

(a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest protective associations and canal companies which are nonprofit organizations; ...

(4) *The exemptions granted by subsection (1) of this section do not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract.* (Emphasis added.)

The taxpayer mentioned that, during the 2004 legislative session, a bill was introduced that would give contractors installing playground equipment an exemption from use tax. That

bill did not pass, which is another indication of the legislature's intent to make the use of such playground equipment taxable. The Commission takes notice that there is a similar bill before the current legislature. That bill, H.B. 32, does not have retroactive effect. Therefore, even if it is enacted into law, it would have no impact on the period in question. The taxpayer's use of the playground equipment is therefore taxable.

THEREFORE, the Notice of Deficiency Determination dated April 22, 2004, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest for the periods January 1, 1993 through July 31, 2001:

|            |                 |              |
|------------|-----------------|--------------|
| <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
| \$4,481    | \$235           | \$4,716      |

Interest is computed through February 28, 2005 and will accrue at \$.74 per day until paid in full.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail,

postage prepaid, in an envelope addressed to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Receipt No.

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